

REMARKS

The Advisory Action dated April 8, 2008 indicates that the Amendment and Response filed December 12, 2007 has been entered. Therefore, **claims 1, 5, 9-15, 17-22, 25, 28, 30, 31 and 33-36 are pending in this application, and claims 19-22, 25, 28, 30, 31 and 33-36 are currently under examination.**

Although the previous amendment was entered, the Office states the arguments were not persuasive, thus the rejections of record remain at set forth in the previous Office action. Since the Advisory Action does not elaborate on which, if any, arguments or amendments placed the application in better condition for allowance, Applicants submit the following arguments, which have been modified from the Amendment and Response filed December 12, 2007.

INFORMATION DISCLOSURE STATEMENT

The Information Disclosure Statement (IDS) filed April 22, 2005 in connection with this application does not appear to have been considered by the Examiner. A copy of the Form 1449 submitted with the IDS of April 22, 2005 was provided with the Amendment and Response filed December 12, 2007. Applicants request that the references be made of record in the application and that the signed Form 1449 be returned to Applicants.

REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH

Claims 19-22, 25, 28, 30, 31 and 33-36 remain rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement for the reasons of record. Applicants traverse this rejection.

The Office alleges that the disclosure does not provide an adequate written description for claims directed to fragments of thymosin β_4 , wherein the fragment comprises 0 to 5 conservative amino acid substitutions in comparison to SEQ ID NO: 1. Although Applicants disagree with this conclusion, solely in an effort to advance prosecution, claims 19, 25 and 28 were amended in the Amendment and Response filed December 12, 2007 to remove the phrase “or variant of a fragment.” Claims 25 and 28 were further amended to exclude polypeptides comprising 0 to 5 conservative amino acid substitutions. Accordingly, Applicants submit this rejection under 35 U.S.C. §112, first paragraph is moot and request withdrawal of the rejection.

REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Claims 19-22, 25, 28, 30 and 31 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The Office maintains that it is not clear how a peptide can have the amino acid sequence of SEQ ID NO: 1 and have substitutions. Claims 19-22, 30 and 31 are not directed to polypeptides comprising amino acid substitutions in comparison to SEQ ID NO: 1, thus Applicants submit it is improper to include these claims in the current rejection.

In regard to claims 25 and 28, Applicants disagree with the Office's conclusion; however, solely in an effort to advance prosecution, claims 25 and 28 were amended in the Amendment and Response filed December 12, 2007 to exclude polypeptides comprising amino acid substitutions in comparison to SEQ ID NO: 1. Accordingly, Applicants submit this rejection under 35 U.S.C. §112, second paragraph is moot and request withdrawal of the rejection.

REJECTION UNDER 35 U.S.C. §102

Claims 19-22, 25, 28, 30, 31 and 33-36 remain rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Kleinman *et al.* (WO 00/06190) for the reasons of record. Applicants traverse the rejection.

First, Applicants note that although the Office indicates claims 33-36 are included in the instant rejection, the subject matter of these claims is not addressed in the Office action dated October 12, 2007, nor was it addressed in the Office action dated May 30, 2007. Furthermore, claims 33-36 are directed to compositions for promoting hair growth comprising a polypeptide consisting of specific amino acid sequences of SEQ ID NO: 1, none of which are disclosed by Kleinman *et al.* Therefore, Applicants submit claims 33-36 are not anticipated by Kleinman *et al.*

In regard to claims 19-22, 25 and 28, Applicants submit that Kleinman *et al.* does not teach each and every element of the claims, and thus does not anticipate these claims. In response to Applicants arguments submitted July 24, 2007, the Office states on page 8 of the Office action dated October 12, 2007 that "Kleinman *et al.* discloses a composition containing a polypeptide comprising the amino acid sequence LKKTET and conservative variants thereof." Applicants do not dispute that Kleinman *et al.* teaches polypeptides comprising LKKTET. However, Kleinman *et al.* do not teach polypeptides "no more than 10 amino acid residues in

length,” nor do Kleinman *et al.* teach polypeptides for promoting hair growth as presently claimed. In order for a reference to anticipate a claim, the reference must teach each and every element of the claim. Since Kleinman *et al.* does not teach each and every element of the pending claims, the claims are not anticipated. Accordingly, Applicants request withdrawal of this rejection under 35 U.S.C. §102(b).

DOUBLE PATENTING

Claims 19-22, 25, 28, 30, 31 and 33-36 stand rejected on the ground of non-statutory obviousness-type double patenting as allegedly unpatentable over claims 3-5 and 29 of U.S. Pre-Grant Publication No. 2004/0220111, for the reasons of record. Applicants traverse this rejection.

Applicants note that U.S. 2004/0220111 contains only 26 claims in the published document. Therefore, it is unclear to Applicants exactly which claims the Office intended to include in this rejection. In addition, as summarized in the Amendment and Response filed July 24, 2007, U.S. Pre-Grant Publication No. 2004/0220111 contains the same disclosure as Kleinman *et al.*, cited above in regard to the rejection under 35 U.S.C. §102(b). Kleinman *et al.* do not claim or even suggest polypeptides of no more than 10 amino acid residues in length, nor any fragments of the thymosin β_4 polypeptide. Kleinman *et al.* also do not claim or teach any compositions for promoting hair growth in a subject. Furthermore, Kleinman *et al.* do not claim or teach any of the specific polypeptides recited in claim 33.

Thus, Applicants submit the pending claims are patentably distinct from the claims of U.S. Pre-Grant Publication No. 2004/0220111 and request withdrawal of the double patenting rejection.

REQUEST FOR INTERVIEW

Applicants hereby expressly request a telephone interview prior to issuance of the next Office action. It is believed that a brief discussion of the merits of the present application may expedite prosecution. This request is being submitted under MPEP §713.01, which indicates that an interview may be arranged in advance by a written request.

CONCLUDING STATEMENT

Applicants believe that the foregoing comprises a full and complete response to the Office Actions of record. Withdrawal of the pending rejections and reconsideration of the claims is respectfully requested. The Examiner is encouraged to contact the representative for Applicants listed below to discuss any outstanding matters.

Respectfully submitted,

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